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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
Petition for Declaratory Ruling) CC Docket No. 98-62
of Sprint Communications Company, L.P.)
to Declare Unlawful Certain RFP)
Practices by Ameritech)

OPPOSITION OF SPRINT COMMUNICATIONS COMPANY, L.P.

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June 15, 1998

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OPPOSITION OF SPRINT COMMUNICATIONS COMPANY, L.P.

Pursuant to Section 1.45 of the Commission's rules, Sprint Communications Company, L.P. ("Sprint") hereby opposes Ameritech's motion to dismiss the above-captioned petition for declaratory ruling.¹

In its motion, Ameritech argues that the Sprint petition is moot because the petition addressed the Ameritech Request for Proposal ("RFP") for teaming arrangements with interLATA service providers, the details of which differ from the agreement Ameritech subsequently reached with Qwest as a result of the RFP. Ameritech asserts that acting on the Sprint petition would violate the FCC's policy against issuing rulings where the factual bases for a ruling are unclear or could change materially.²

¹ See Ameritech Motion to Dismiss filed June 4, 1998 in CC Docket No. 98-62.

² See id. quoting Yale Broadcasting Co. v. FCC, 478 F.2d 594, 602 (D.C. Cir.), cert., denied, 414 U.S. 914 (1973).

After filing its motion to dismiss the Sprint petition, Ameritech filed a separate petition seeking an expedited declaratory ruling that the Ameritech-Qwest agreement complies with Sections 271 and 251(g).³ In its petition, Ameritech emphasized the urgency of resolving these issues promptly to remove the uncertainty surrounding its agreement with Qwest.⁴ U S WEST has also filed a petition for declaratory ruling seeking resolution of the legal status of its teaming agreement with Qwest.⁵

Finally, after both of the District Courts considering the Qwest agreements granted the Commission's requests for primary jurisdiction referrals, the Commission issued a public notice asking the plaintiffs in those cases to file complaints with the Commission.⁶ These complaints will apparently provide the basis for the FCC's comprehensive review of the teaming arrangements between Ameritech and Qwest and between U S WEST and Qwest.

In light of the complaint proceedings, it is unclear what purpose the pending petitions for declaratory ruling (Sprint's, Ameritech's and U S WEST's) will serve. It would nevertheless be prudent for the FCC to keep the declaratory ruling proceedings open, since Ameritech apparently intends to challenge the

³ See Ameritech Petition for Expedited Declaratory Ruling, filed June 11, 1998.

⁴ See id. at 1-2.

⁵ See U S WEST Petition for an Expedited Declaratory Ruling, filed June 11, 1998.

⁶ See Public Notice, DA 98-1109 (rel. June 11, 1998).

validity of the complaint proceedings.⁷ Moreover, while Ameritech's mootness argument fails on its own terms,⁸ the Commission can most efficiently resolve the issues raised by the instant motion to dismiss by simply consolidating the Ameritech and Sprint petitions (as well as the U S WEST petition). All three of the parties agree that the primary goal of these proceedings is the prompt resolution of the underlying legal issues based on a full and adequate record. For the consolidated

⁷ See Ameritech Petition for Expedited Declaratory Ruling at 2-3 (alleging procedural defects of Section 208 complaint proceedings for review of the teaming arrangements).

⁸ Ameritech is incorrect that the facts of this proceeding are subject to change. Sprint filed a copy of the Ameritech-Qwest agreement in the instant docket on May 29, 1998, well before the deadline for filing comments (June 4th) on its petition. See Letter from Sue D. Blumenfeld, Attorney for Sprint Communications Co. to Magalie Roman Salas, May 29, 1998. As of that filing, the facts of this matter were unlikely to change materially. Indeed, Ameritech has not suggested that its agreement with Qwest is subject to change. Thus, this proceeding does not concern the kind of unstable factual situation which Ameritech asserts would warrant dismissal.

Nor can Ameritech claim that the Sprint petition failed to provide adequate notice that the Qwest agreement would be considered as part of this proceeding. A party has received adequate notice where the rule ultimately adopted is a "logical outgrowth" of the proposal for which comment was originally requested. See Aeronautical Radio Inc. v. FCC, 928 F.2d 428, 445-446 (D.C. Cir. 1991). Any decision regarding the legality of the Ameritech-Qwest agreement, entered into as a result of the RFP, would surely be a "logical outgrowth" of the original Sprint petition. The Sprint petition therefore provided adequate notice that the agreement entered into as a result of the RFP would be subject to review in this proceeding. In fact, many parties discussed the merits of the Ameritech-Qwest agreement in their comments. See, e.g., Comments of MCI, Comments of AT&T, Comments of the ALTS. Ameritech will have an opportunity to respond to those arguments in its reply comments.

proceeding to function as an effective "back up" proceeding, it is important that the record developed in the Sprint petition be preserved. Once the proceedings have been consolidated, there could be no disputing the fact that the Qwest agreements have been formally raised in this proceeding. Moreover, it is well within an agency's discretion to consolidate proceedings where it is fair and efficient to do so.⁹

Sprint therefore respectfully requests that the Commission consolidate its petition for declaratory ruling with those subsequently filed by Ameritech and U S WEST.

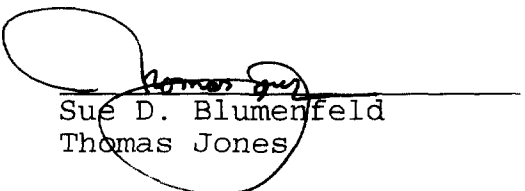
⁹ See Nader v. FCC, 520 F.2d 182, 195-196 (D.C. Cir. 1974) (determination as to whether to consider issues on a consolidated basis is within the discretion of the agency); City of San Antonio v. Civil Aeronautics Bd., 374 F.2d 326, 328-330 (D.C. Cir. 1967) (same).

CONCLUSION

The Commission should reject Ameritech's motion to dismiss and consolidate the instant proceeding regarding the Sprint petition for declaratory ruling with the Ameritech and U S WEST petitions for declaratory rulemaking ruling. Such consolidation will eliminate any concern regarding the mootness of the Sprint petition and will advance the overarching goal of full and expeditious consideration of the Qwest teaming arrangements.

Respectfully submitted,

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June 15, 1998

CERTIFICATE OF SERVICE

I, Catherine M. DeAngelis, do hereby certify that on this 15th day of June, 1998, copies of the foregoing "Opposition of Sprint Communications Company, LP" were hand delivered or sent by First Class Mail, postage prepaid, to the following parties:

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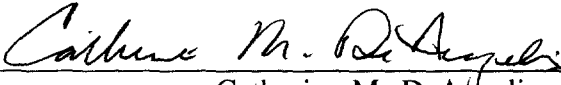
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